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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-703

ROBERT PHILLIPS and
WILLIAM ARNOLD TOLBERT, JR.
Petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

PETITIONER'S REPLY

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The government response asserts, at p. 5:

> Petitioner [Phillips] does not claim that the IRS jeopardy assessment affected the fairness of his trial.

This is not so. We would urge that a presumption of unfairness requires the return of the money.*

The government's footnote reference to Phillips' real estate holdings is entirely inappropriate. First, fact-finding is not the normal function of appellate courts, *DeMarco vs. United States,* 415 US 499 (1974). Second, Phillips should not have to make a showing that without the seized money he was "absolutely destitute." *Adkins vs. E. I. Dupont de Nemours,* 335 US 331 at 339-340 (1948).** Third, we don't know whether Mrs. Phillips would waive her dower rights to finance her husband's legal difficulties.

Finally, this Court has nothing before it to determine Phillips' liquidity which is the usual paramount concern of a criminal lawyer assessing a potential client. Had Phillips had the $5,000.00, he might have been able to get a lawyer good enough to win the case in one of the lower courts and the trip here wouldn't have been necessary.

Respectfully submitted,

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Dated: March 25, 1975

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* Of course, if you are talking about a $300,000 seizure, cf. *Laing vs. United States,* 496 F 2d 853 (CA 2 1974), cert granted October 15, 1974 73-1808, maybe the defense could get along with a little less than the full amount seized.

Our petition does not address the statutory issues in *Laing* or *Hall vs. United States,* 493 F 2d 1211 (CA 6 1974), cert granted October 15, 1974, 74-75. Our claim is based upon the inherent power of a court to assure a defendant a fair trial. Cf. *Shapiro vs. Secretary of State,* 499 F 2d 527, 535-536 (CA DC 1974), cert granted February 18, 1975, 74-744, where the Court of Appeals noted that Shapiro needed the money to make bond in another court.

** We should allow for some hyperbole here. One's description of his holdings might vary considerably depending on whether he is talking to a judge about to fix his bail or a tax assessor about to value his property.